

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE LEE MACK, JR.,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 266374
Wayne Circuit Court
LC No. 05-005749-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of carrying a concealed weapon, MCL 750.227, possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction and two years' probation for his four remaining convictions. Defendant appeals as of right. We affirm.

Defendant first contends that trial court erred in denying his motion to suppress given that the police unlawfully searched his car. We disagree.

Factual findings made in conjunction with a motion to suppress are reviewed for clear error. *People v Stevens (After Remand)*, 460 Mich 626, 631; 597 NW2d 53 (1999). However, to the extent that the trial court's decision is based on issues of law, appellate review is de novo. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). Constitutional questions are reviewed de novo. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997).

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. *People v Beuschlein*, 245 Mich App 744, 749; 630 NW2d 921 (2001). The lawfulness of a search or seizure depends on its reasonableness. Generally, a search conducted without a warrant is unreasonable unless it was conducted pursuant to an established exception to the warrant requirement. *Beuschlein, supra* at 749. Pursuant to the search incident to arrest exception, on making a lawful arrest of the occupant of a vehicle, an officer may search the occupant and the entire passenger compartment of the vehicle as well as containers therein. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *People v Yeoman*, 218 Mich App 406, 412; 554 NW2d 577 (1996).

The evidentiary hearing testimony revealed that defendant was pulled over for driving 96 miles per hour in a 70 mile an hour zone. After looking up defendant's name in the police LEIN system, Sergeant Barton DeVos determined that there was an officer safety flag corresponding to defendant's name and a notation to verify defendant's identification. Defendant was unable to produce his driver's license or any other form of photographic identification and was arrested for driving without a license. Pursuant to MCL 257.311, a driver must have his operator's license in his immediate possession at all times when operating a motor vehicle and must display it on demand of any police officer. Violation of the statute is a misdemeanor for which the driver can be arrested if the driver committed the offense in the officer's presence. MCL 257.901; MCL 764.15(1)(a). Here, defendant committed the offense in the arresting officer's presence, and thus, his arrest was lawful.

After defendant was arrested, but before he was taken to the police station, Officer Michael Eggleton conducted a search of the passenger compartment of defendant's car which uncovered drugs. Such was a proper search pursuant to the search incident to arrest exception. *Yeoman, supra* at 412. Although the search incident to arrest exception does not allow a search of the trunk of a car, the automobile exception stands for the proposition that a warrantless search of an automobile in its entirety, including the trunk, is reasonable if probable cause exists to believe that the automobile contains contraband. *People v Clark*, 220 Mich App 240, 242; 559 NW2d 78 (1996). Once Eggleton found cocaine in the passenger compartment of defendant's car, probable cause existed to believe that defendant's car contained contraband, and thus, to search the entire car, including the trunk. Furthermore, the search of defendant's person, which uncovered \$4,480 in cash, was proper pursuant to the search incident to arrest exception. *Yeoman, supra* at 412.

An alternate ground for upholding the search of defendant's car finds its basis in the inventory search exception to the warrant requirement. Under the inventory exception, a vehicle impounded by police under a reasonable departmental policy addressing when a vehicle may be impounded does not violate the constitutional prohibition against unreasonable searches and seizures. *People v Green*, 260 Mich App 392, 412-413; 677 NW2d 363 (2004), rev'd in part on other grounds *People v Anstey*, 476 Mich 436 (2006); *People v Poole*, 199 Mich App 261; 501 NW2d 265 (1993) (pursuant to police department policy, a police officer may lawfully impound a car when a person is arrested and there is no one available to take care of the arrestee's car). The existence of a standard police procedure may be established through the testimony of an officer. *Green, supra* at 411. The routine police practice of securing and inventorying impounded vehicles serves to protect the owner's property while it remains in police custody, to protect the police against claims or disputes over lost or stolen property, and to protect the police from potential danger. *Green, supra* at 412-413. An inventory search conducted pursuant to standardized police procedure is reasonable to the extent it is necessary to fulfill the caretaking function. *Green, supra* at 412-413.

DeVos testified that pursuant to department policy, it was necessary to conduct an impound and inventory search of defendant's car. While conducting the inventory search, DeVos found, among other contraband, a handgun and a sword-like knife. The trial court correctly determined that evidence seized should not be suppressed. The search of the trunk was lawful pursuant to the inventory and automobile exceptions to the warrant requirement. *Green,*

supra at 412-413. Accordingly, the evidence seized during the search of defendant's person and his car was properly obtained, and the trial court did not err in failing to suppress it.

Second, defendant contends that the trial court erred in denying his motion for a directed verdict on the felony-firearm charge. We disagree.

In reviewing a claim from the denial of a directed verdict motion, this Court must review the evidence that has been presented up to the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Burgenmeyer*, 461 Mich 431, 434; 606 NW2d 645 (2000).

To prove the offense of felony-firearm, the prosecutor must establish the following elements: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Constructive possession of a firearm is proved if the firearm is known to the person and is reasonably accessible to him. *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989). Determination whether a person possessed a firearm during the commission of another felony requires examination of the circumstances at the time of the commission of the offense; possession or lack of possession of a firearm at the time of the arrest is irrelevant. *Burgenmeyer, supra* at 435. A person has possession of a weapon when it is available and accessible at the time the crime was committed. *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993).

Trial testimony indicated that a search of defendant's trunk uncovered a .38 caliber revolver. The revolver was introduced into evidence. Although there was no testimony concerning the operability of the weapon, an item is a firearm for the purpose of the felony-firearm statute if it is designed and manufactured to propel a dangerous projectile other than BBs, regardless whether it is currently operable. *People v Peals*, 476 Mich 636, 640-641; 720 NW2d 196 (2006). Here, the evidence strongly suggested that the revolver was covered by the statute's definition of firearm. With regard to the possession element, the question is not whether defendant "possessed" the firearm at the time of his arrest, but rather, whether he possessed it during the commission of the offense of felon in possession of a firearm. To prove the offense of felon in possession of a firearm, the prosecution must establish that a defendant, who has been convicted of a specified felony, possessed a firearm. *People v Tice*, 220 Mich App 47, 50; 558 NW2d 245 (1996). In his statement to police, defendant admitted that the car he was driving was his and he placed the gun in the trunk. Defendant's statement, combined with the finding of a firearm in his trunk and a stipulation that defendant was previously convicted of a specified felony and was ineligible to possess a firearm at the time of his traffic stop, led to a finding that defendant was guilty of felon in possession of a firearm. It is reasonable to conclude that during the course of committing the offense of felon in possession of a firearm, defendant "possessed" the firearm for purposes of felony-firearm as well. Consequently, a rational trier of fact could find that the elements of felony-firearm were proven beyond a reasonable doubt. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict on the felony-firearm charge.

Finally, defendant contends that the Interim Bond Act was violated and such violation requires a suppression of the evidence against him. We disagree.

Generally, issues of statutory interpretation are questions of law reviewed de novo. *People v Thomas*, 263 Mich App 70, 73; 687 NW2d 598 (2004). However, this Court reviews defendant's unpreserved claim of error for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, defendant must establish that: (1) an error occurred; (2) the error was plain; (3) and the plain error affected defendant's substantial rights, i.e., it affected the outcome of the lower court proceedings. *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003), citing *Carines*, *supra* at 763.

The Interim Bond Act, MCL 780.581, states, in relevant part:

(1) If a person is arrested without a warrant for a misdemeanor or a violation of a city, village, or township ordinance, and the misdemeanor or violation is punishable by imprisonment for not more than 1 year, or by a fine, or both, the officer making the arrest shall take, without unnecessary delay, the person arrested before the most convenient magistrate of the county in which the offense was committed to answer to the complaint.

(2) Except as otherwise provided in section 2a, if a magistrate is not available or immediate trial cannot be had, the person arrested may deposit with the arresting officer or the direct supervisor of the arresting officer or department, or with the sheriff or a deputy in charge of the county jail if the person arrested is lodged in the county jail, an interim bond to guarantee his or her appearance

(3) *If, in the opinion of the arresting officer or department, the arrested person is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, is wanted by police authorities to answer to another charge, is unable to establish or demonstrate his or her identity, or it is otherwise unsafe to release him or her, the arrested person shall be held at the place specified in subsection (4) until he or she is in a proper condition to be released, or until the next session of court.* [Emphasis added.]

Defendant contends that the statute was violated given that he was not permitted to post bond, and the proper remedy for this violation is a suppression of the evidence. However, subsection three allows police to detain an arrestee, even if the arrest is for a traffic violation, where the arrestee is unable to establish his or her identity. Defendant was unable to produce a driver's license or any form of photographic identification. Additionally, a notation in the LEIN system corresponding to defendant's name instructed officers to take care to verify his identity. Given the circumstances, the officers were justified in detaining defendant at the police station until they could in fact verify his identity. With regard to the evidence seized, the search of defendant's car and his person were justified pursuant to the search incident to arrest, inventory, and automobile exceptions to the warrant requirement. Accordingly, the Interim Bond Act was not violated and a suppression of the evidence is not required.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto